

Give Consumers a Choice:  
Parents Television Council Comments on A La Carte  
707 Wilshire Blvd., Suite 2075  
Los Angeles, CA 90017  
FCC NOI Response  
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## Overview of the Issues

Americans have had enough of the filth beaming across the public airwaves. An outraged public convinced their federal representatives to step up and take action. The FCC too is feeling the heat. Because of heightened scrutiny in the Congress over the FCC's complete and utter failure to enforce broadcast decency laws has forced the issue onto the public stage. Finally the FCC is seen to be taking a stand against radio and television licensees. Congress is considering legislation to increase the penalties for violators. The television and radio networks are promising swift and decisive measures to protect the public.

In spite of this wave of attention and avowed response from those accountable, there is a gaping loophole as it relates to the dangers of graphic sex, violence and profanity being faced by American families in their own living rooms. The cable television networks comprising the basic and expanded basic tiers are, at the present time, seemingly immune from the law surrounding broadcast decency. The broadcasters are crying foul - demanding that there be a level competitive playing field for their competitors. The broadcast networks are, for the first time in their history, a minority in terms of total viewership when compared to cable.

There is no ostensible difference today between broadcast networks and basic cable networks. In a universe of over 80 million US homes subscribing to one form of cable service or another, cable is ubiquitous. Cable networks lobby intensely for prime location on the program dial. Where broadcasters remain in the same spot as their VHF station number (e.g. channel 4, 5, 7 or 9), networks like USA, MTV, Nickelodeon and others vie for the coveted channels in close proximity (e.g. channels 3, 6, 8 and 10). So if a child, sitting in his or her own living room, scans from channel 2 thru channel 13, he or she will succumb to changes in broadcast decency laws 10 times. And when parents are required to subscribe to offensive networks in order to provide a select few child-positive networks, something is terribly wrong.

Why should parents have to subsidize cable channels that undermine their core values and beliefs? Why should a parent who wants their child to benefit from educational programming on the Disney Channel or the Discovery network also have to pay for offensive material like the following, from MTV's Real World: San Diego:

Cameran: "Brad's gonna have to be whacking it the whole time he's here."

Brad: "Why me?"

Robin: "Because you've had sex with somebody for five years,

constantly on a base, haven't you?"

Brad: "Yeah."

Cameran: "This'll be the longest you've gone."

Robin: "This will be the longest you've gone without sex for 5 years."

Brad: "Oh, damn."

Robin: "Speaking of masturbation..."

Cameran: "I have my vibrator."

Or stomach-turning jokes about pedophilia, as in the following example from Comedy Central's South Park:

TV anchor: "Do you actually believe in heaven?"

Man: "If heaven is an 8-year-old boy, and the ladder is my penis."

Consider this 2004 episode of FX's The Shield, a program that airs at 7:00 p.m. on satellite:

Police Captain David Aceveda has been tied up by a gang member and his friend who, earlier in the episode, were forced to smoke from a bong pipe by one of Aceveda's men, Detective Vic Mackey.

Gang member: You ever suck a dick like a cell bitch, cop man?

Huh?"

The gang member unbuckles his belt and unzips his pants.

Gang member: "It's your turn to gag on something, huh?"

The gang member holds the barrel of the gun to Aceveda's mouth.

Gang member: "Open up, sweetheart."

Gang member: "Let's see that mouth."

The gang member's pants appear loose and falling off his waist.

Aceveda is on his knees on the ground in front of him, performing forced fellatio. The gang member holds the gun on Aceveda and can be heard making slight grunting noises. Most of Aceveda's head is blocked by a sofa, but a portion of it is visible as the gang member puts one hand on the back of Aceveda's head and moves it back and forth.

Gang member: "Put your groove into it. Suck it!"

We can see Aceveda from behind as he pulls his head away, coughs, spits and gags.

Gang member, laughing: "A little bigger than you're used to?"

With his gun on Aceveda's jaw, he directs Aceveda's head back to his penis.

Gang member: "Mmmm...Yeah, just like that."

Again, his hand is on Aceveda's head, rhythmically directing it back and forth.

Gang member, to his friend who is watching the encounter: "Your phone! I want to get a Kodak of this." To Aceveda, "Yeah, that's the way." He licks his lips, "Mmm. Okay. You ready?"

The gang member's friend points his camera at the two of them and takes a picture. The gang member yells in triumph as the forced fellatio by Police Captain Aceveda is recorded for "posterity."

And it's not just that an outraged public is paying for something it doesn't want, it is also - indirectly - footing the bill for offensive material on the public airwaves. In essence, Americans are paying Infinity Radio's broadcast indecency fines through forced subscription fees that are paid back to Viacom's equally-foul cable networks.

Not only are parents forced to pay for offensive programming, but they are at times also forced to take adult content channels into their homes. Consider the frustration of the PTC member who had to carry the Playboy and Spice networks in her cable package.

"We have digital cable (which is very nice for getting info about programs, parental controls, etc.). The basic service comes with about 5 adult channels such as Spice, Playboy, etc. which I was horrified to find out.

My 12 year old son is sheltered from a lot of TV and movies and is made fun of in 7th grade for this. Several months ago, he ordered several of these shows which I was certainly unaware of until the bill came. Partly my fault since I hadn't changed the pin number from default 0000 and thought the only use for it was to order movies (as a family).

Anyhow, in trying to rectify the situation it took me 3 calls to the cable company. On the third call I finally had a rep smart enough to suggest we put a \$1.00 credit limit on ourselves and therefore no movies could be ordered. I was outraged that HBO, Cinemax, etc are extra which you have to subscribe to and these adult channels are right there whether we want them or not. I was told that it was a HUGE moneymaker and I would be surprised that the majority of subscribers order from these.

Don't you think this is preposterous?"

Yes, we do think it is preposterous and that is why consumers need to have the ability to control what comes into their home on a nightly basis.

The Parents Television Council has launched a campaign to address the issue of indecent programming on cable television and to recommend public and private sector remedies for American consumers.

#### Solution Alternatives

The debate over indecency and violent content has raised four (4) potential solutions to the issue of indecent programming on cable television:

1. Require all MSOs to provide a simple, easy-to-use, channel-blocking functionality for its customers
2. Require all networks which are carried as a part of a basic or expanded basic tier to conform to broadcast decency standards.
3. Require cable Multiple System Operators (MSOs) to provide basic or expanded basic cable networks on tiers that conform to an easily-to-understand content rating system, e.g. a G-rated tier, PG-13 rated tier, etc.
4. Require cable MSOs to unbundle all networks so consumers can pick and choose precisely the channels to which they may subscribe.

Of these four alternatives, we strongly believe that the strongest case can be made for the fourth alternatives, the total unbundling of networks by the MSOs. Programmers and networks have been carried on the backs of the American public long enough.

#### Likely Objections from the Industry

The cable industry knows that there is a strong movement afoot either to give the FCC the authority to regulate content on basic cable, or to give subscribers the option of family-friendly cable tiers or à la carte cable packaging, which would allow consumers to pay for only those channels they actually want. In response to this movement, the cable industry announced that it would provide free equipment to subscribers so they can block unwanted channels.

Why did it take so much public and congressional pressure for the industry to provide this solution? The answer is simple: their monopolistic leverage has provided them immunity from being held accountable. Obviously the cable industry has had the technology and wherewithal to provide consumers the ability to block cable channels they deemed unfit for their children for quite sometime. But instead the industry withheld this technology and even charged consumers for its use in an effort to line its pockets without any regard for what was truly best for their customers. The announcement was at best an empty gesture meant to appease angry consumers and lawmakers, and it shows the industry's desperation to maintain the status quo.

Still, we are heartened by the fact that the cable industry is at least willing to acknowledge that a problem exists, and we are heartened that they have proposed a solution. But it is not the right solution because consumers are still paying for those blocked networks.

The cable industry will insist that parental controls are the only way to protect families from offensive content without undermining the economic stability of the industry or to avoid First Amendment violations. Forcing consumers to pay for a service that (a) they don't want, and (b) they deem to be reprehensible, and then providing a technological means to prevent that service from being consumed is sheer and utter folly. Such a practice amounts to licensed extortion of the American public.

The cable industry will likely consider solution #2 to be in violation of Constitutional protections. While we must not interfere with the rights for adults to consume whatever media that they are lawfully entitled to consume, the US Supreme Court has held that there is a compelling state interest in protecting our children from obscene, indecent and profane material. Despite the fact that a cable signal is delivered by the MSO to its customers through privately-owned wiring or fiber, the public airwaves are used - for free - as part of the critical delivery path from cable network to end consumer. The networks beam via

satellite their broadcast signal to each cable MSO head end. Furthermore, the signal crosses public rights-of-way on its path from the head end to the end consumer. When the Supreme Court ruled on *Pacifica*, it took into consideration the pervasiveness of the broadcast airwaves. Opponents of unbundling will scream that cable is a luxury, and if so chosen, you take the good with the bad. However, owning a television is a luxury as well. Consumers choose to own a television set and allow the airwaves into their homes, making the television set a luxury. The Supreme Court upheld indecency standards on the broadcast airwaves because of its potential harm to children. Why shouldn't cable be considered the same as the broadcast airwaves on basic expanded tiers when cables pervasiveness now reaches close to 85% of the homes in America?

The industry arguments against solutions #3 and #4 are similar, and include the following:

The cable lobby will insist that unbundling or content tiers would create a dramatic change in the economic structure of the cable industry, resulting in the financial ruin for much of the industry. On average a cable network receives 30% of its revenue from advertising and 70% from subscriber fees. But the financial model argument falls apart with the consolidated ownership reality of cable television. Almost every cable network is owned in part or in total by a major media conglomerate. Furthermore, the value to a network (and to the network's advertisers) is dramatically increased by knowing who wants to subscribe. The advertising revenue objection is eliminated if networks sell their advertising based on actual viewership levels rather than potential audience reach. There is in fact a huge selling point to advertisers if a subscriber opts in to keep their network. The cross-subsidizing model makes it less-risky financially to own and operate a cable network, but it would not truly alter consumer/market demands. If a specialized cable network cost a consumer ten dollars, then the consumer will decide if that network is worth spending ten dollars on. Again, it gives the consumer the choice to pay for the programming he desires.

They will say that It is technically (and therefore financially) impracticable or unfeasible to provide unbundled network programming. Digital cable negates the argument against the ability to tier their networks. The necessary billing and signal delivery functionality can be automated via software embedded in the digital set-top box. Digital distribution provides adequate parental control, and would enable automated a la carte subscription and billing functionality.

All cable Multiple System Operators (MSOs) are pushing digital cable aggressively. Digital cable provides the MSO the ability to deliver Pay-Per-View (PPV), VOD, data services (e.g. internet connectivity), merchandising/commerce and other interactive services. Digital cable is bandwidth-smart for MSOs. Digital allows personalization of network offerings, easy channel blocking and automated billing based on channel selection. Comcast Cable, the nation's largest MSO, currently has secured approximately 70%

of its subscribers as digital subscribers, and they are targeting the end of 2005 to achieve 100% of its subscribers as digital subscribers.

The industry will say that no specialty networks would exist without bundled service. This argument is illusory. Most specialty networks are owned in part or in full by large media corporations that are focused on extending their existing assets. (The two primary cable sports network franchises - ESPN and Fox Sports - are owned by the Walt Disney Company and News Corporation, respectively; NBC/General Electric owns Bravo, Sci Fi, MSNBC, CNBC, Shop NBC and it holds minority interests in History Channel, A&E and Biography Channel; HGTV is owned by Home & Garden; The Golf Channel is owned by the PGA Tour; Time Warner; Comcast holds ownership positions in xx; Viacom owns xx; SuperStation WGN is owned by the Tribune Company; Cablevision owns xx.) Their primary strategic reason for creating cable networks is not for the license fee but rather as a means of extending their brand and to increase advertising avails to more distribution outlets. Furthermore, the massive industry investment in VOD will negate the issue of programming diversity entirely.

The Parents Television Council recommends to Congress that if the Cable industry is not willig to give consumers a choice regarding the programming coming into their homes, then Congress must act to ensure American's are not having to subsidize indecent and pornographic material broadcasting into their homes via their basic expanded package. There is no reason why this extortion needs to continue.

Attachment B

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TESTIMONY  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET  
OF THE U.S. HOUSE OF REPRESENTATIVES

"Competition and Consumer Choice in the MVPD Marketplace  
Including an Examination of Proposals to Expan